



SEN. GEORGE RUNNER (RET.)

MEMBER

STATE BOARD OF EQUALIZATION

CALIFORNIA'S TAX BOARD

September 2, 2011

Honorable Jerry Brown
Governor, State of California
State Capitol
Sacramento, CA 95814

Honorable Darrell Steinberg
Senate President Pro Tempore
California State Senate
State Capitol, Room 205
Sacramento, CA 95814

Honorable Bob Dutton
Senate Republican Leader
State Capitol, Room 305
Sacramento, CA 95814

Honorable John Perez
Speaker of the Assembly
California State Assembly
State Capitol, Room 219
Sacramento, CA 95814

Honorable Connie Conway
Assembly Republican Leader
State Capitol, Room 3104
Sacramento, CA 95814

Dear Governor Brown and Legislative Leaders:

I am writing to urge you to consider a proposal by Amazon.com that would bring an estimated 7,000 jobs to California.

As you are aware, California's unemployment rate is the second highest in the nation. Our state's budget problems stem from a shortage of jobs, as millions of Californians are either unemployed or underemployed and have little discretionary income.

We need to do a better job attracting jobs and investment to our state if we want to solve the economic and fiscal challenges we currently face.

The deal recently proposed by Amazon would be a win-win for California. Not only would the proposed deal bring jobs to California, it would ensure that Amazon establishes a clear unimpeachable nexus in California.

Such nexus would guarantee that Amazon would collect and remit California sales tax for years to come. The new jobs and facilities would generate millions of dollars in income and property tax revenue for state and local government.

Furthermore, repealing AB 28X would restore jobs for thousands of affiliates, as well as \$31-43 million in lost affiliate income tax revenue, as projected by the Performance Marketing Association.

Some have cited a reluctance to “give up” the \$200 million in projected AB 28X revenue as a reason to reject the proposed deal. The BOE analyses of AB 28X and related bills, however, warned that these budget dollars were always questionable because of “probable behavioral changes” by online retailers.

According to the BOE analysis of AB 28X:

Immediate full voluntary compliance by all affected out-of-state retailers is questionable, and a delay in the collection of projected use tax revenues is likely. Also, the termination of California affiliate programs or relocation of in-state service providers would have an adverse impact on state employment, which in turn would lead to lower revenues from sources such as the personal income tax and the corporation tax.

We now have the benefit of hindsight to see that these concerns were warranted. BOE staff is not aware of any online retailers that have registered with BOE to collect sales tax because of AB 28X. In fact, the total number of out-of-state registrations with BOE in July 2011 (180) was lower than July 2010 (211), approximately a 12% drop.

Given that out-of-state retailers are required to register with BOE prior to collecting the tax, the lack of mass registrations is a clear signal that few, if any, out-of-state retailers intend to submit a payment in October 2011.

There are several additional reasons you should not expect this revenue picture to change in the near future:

- 1. Affiliate terminations:** As anticipated by the BOE analysis, rather than be forced to collect sales tax, hundreds of online retailers have severed ties with their affiliates in California, removing their nexus in California, and signaling that they have no intention to collect sales tax here in the future, or to expand and locate jobs in our state.
- 2. Referendum effort:** Amazon has gathered the necessary signatures to force a referendum of the law. According to a recent Legislative Counsel opinion, AB 28X will be placed on hold until a referendum vote—most likely June of next year. California voters appear likely to reject the measure, which would eliminate all revenue from the law. But even if they do not, BOE will not be able to further implement and enforce the law until next fiscal year, at the earliest.

- 3. Litigation:** Should the referendum effort fail, BOE legal staff believes it is extremely likely that one or more major online retailers will choose to litigate rather than collect the tax. It could take years of costly litigation to defend AB 28X, and given court precedent is probable that the U.S. Supreme Court will find some or all of its provisions to be unconstitutional.

It would be a terrible mistake to reject thousands of jobs for Californians on a faulty budget estimate. Please re-examine the AB 28X budget estimate to ensure that we do not miss a historic opportunity to help struggling California families get back to work, as well as drawing significant new business investment and tax revenue to our state.

Thank you for your consideration and your service on behalf of the people of California.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Runner", with a stylized, cursive script.

GEORGE RUNNER

cc: Ana J. Matosantos, Director, California Department of Finance